

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation Provisions)	
of the Telecommunications Act of 1996)	
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Clarification)	
)	

**RBOC PAYPHONE COALITION'S REPLY COMMENTS ON
FURTHER NOTICE OF PROPOSED RULEMAKING**

INTRODUCTION AND SUMMARY

The RBOC Payphone Coalition¹ ("the Coalition") files these reply comments in response to the Further Notice of Proposed Rulemaking seeking comment on whether the Commission should amend its rules to clarify which carrier is responsible for paying per-call compensation on calls routed to switch-based resellers.²

The Comments filed in this proceeding confirm that the Commission should maintain the rules it adopted in the *Second Reconsideration Order*.³ Those rules have garnered full or qualified support from every segment of the industry – not only payphone service providers ("PSPs"), but some first-switch interexchange carriers ("IXCs") and many switch-based resellers

¹ The RBOC Payphone Coalition comprises BellSouth Public Communications, Inc., SBC Communications Inc., and the Verizon telephone companies.

² See Further Notice of Proposed Rulemaking, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC 03-119 (rel. May 28, 2003) ("FNPRM").

³ Second Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 16 FCC Rcd 8098 (2001) ("Second Reconsideration Order").

("SBRs") as well. And while some IXC's and a few SBRs prefer the rules adopted in the original *Payphone Orders*,⁴ the arguments they offer in support of their position are self-contradictory and unpersuasive. For example, IXC's complain about the difficulties of obtaining accurate call-tracking information and collecting compensation under their contracts with SBRs. But IXC's and SBRs can address these issues through contract; PSPs have no such business relationship with SBRs, and the old rules essentially put PSPs at SBRs' mercy. The Commission should not return to that failed regime.

There can be no dispute that the Commission has a statutory responsibility to ensure that PSPs are fairly compensated for calls that IXC's route to their SBR customers. Nor is there any dispute that, as a result of the administrative inefficiencies of the original compensation regime, PSPs were deprived of fair compensation for those calls. Most important, even the most stubborn opponents of the "Tollgate" rule adopted in the *Second Reconsideration Order* concede that the new rule has led to an improvement in PSPs' ability to collect. See Sprint Comments at 7 (acknowledging that payphone compensation receipts have "increase[d] . . . modestly"). Accordingly, the Commission must conclude that the current regime does a significantly better job of implementing the statutory command than the one it replaced. Such progress provides a compelling reason for retaining the Tollgate rule.

The Commission appropriately placed on IXC's the obligation to track and pay compensation for all completed payphone-originated calls that they carry. IXC's are economic beneficiaries of *all* such calls, including calls that they route to their SBR customers, and it is

⁴ Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20,541 (1996); Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 21,233 (1996) (together the "Payphone Orders").

entirely consistent with the Commission's policy to require IXC's to compensate PSPs for the services that PSPs provide. Moreover, none of the comments at issue here casts any doubt on the Commission's conclusion that facilities-based IXC's are best situated to track and pay such compensation, even on calls routed to SBRs. IXC's and SBRs are engaged in a voluntary business relationship in a market that is highly competitive; the market is far better able to devise solutions to any supposed technical issues related to exchange of call completion information than any regulator. Promoting such market efficiencies serves the public interest. And competition tends to ensure that IXC's can recover their costs, but not more, from SBR customers.

The argument by some IXC's and a few SBRs that the Commission should return to the failed system adopted in the original *Payphone Orders* is without merit. As comments filed in this proceeding attest, the prior system required thousands of PSPs to seek relatively small amounts of compensation from thousands of SBRs with whom PSPs had no business relationship of any kind and whom PSPs could not independently identify. Not only did that system deprive PSPs of fair compensation, but it also imposed harmful inefficiencies.

Nor should the Commission consider any alternative proposals for compensation. The "Tollgate" rule has been in place for nearly two years, and the rule has earned support from all segments of the industry. Experimenting with something new would be imprudent; working out the details of any such system within the deadline established by the D.C. Circuit would be impractical. Nor should the Commission use this order to address any of the other miscellaneous issues raised in the comments; parties are free to seek declaratory rulings if there are any points of uncertainty under the rules.

Although a few IXC's object to the reporting obligations imposed in the *Second Reconsideration Order*, they do not and cannot claim that they are unable to comply with them. The Commission should maintain reporting requirements that are at least as comprehensive, and leave it to private parties to arrange any modifications.

None of the comments takes issue with the proposition that parties should be able to contract around the current rules, so long as all affected parties agree.

DISCUSSION

The Comments filed in this proceeding confirm that the Tollgate rule adopted in the *Second Reconsideration Order* is a significant improvement over what came before and should be maintained. Not only do PSPs support the rule, but a broad coalition of SBRs support it as well. As ASCENT, Focal, and US LEC observe, the Tollgate rule "has been in place for approximately 19 months and . . . has been successful in meeting the objectives of section 276 of the Act in an equitable and efficient manner." ASCENT Comments at 1-2. Another coalition of SBRs confirms that the Tollgate rule "has worked well." Communigroup of K.C., Inc., *et al.* Comments at 1; *see also* OCMC Comments at 1 ("no objection to the proposed amendments"). Moreover, two IXC's express no opposition or qualified support for a modified Tollgate rule. Qwest Comments at 12; Global Crossing Comments at 7. The objections to the Tollgate rule registered by facilities-based IXC's and a handful of SBRs are without merit.

I. THE TOLLGATE RULE IS HELPING PSPS TO APPROACH FAIR COMPENSATION

A. PSPs Did Not Receive Fair Compensation Under the Original Rules

The first question that the Commission posed in this proceeding has generated relatively little controversy. No party disputes that under the prior compensation regime, PSPs did not receive fair compensation for "each and every completed . . . call using their payphone[s]."

47 U.S.C. § 276(b)(1)(A). The APCC has meticulously explained why the “major collection problems inherent in the dial-around compensation system are multiplied many times over” by including SBRs in the “pool of carriers from whom PSPs must collect compensation.” APCC Comments at 4; *see id.* at 2-11. Bulletins attests that its experiences with attempting to collect appropriate tracking data and compensation were “nothing short of a nightmare.” Bulletins Comments at 4. Others within the industry – including facilities-based IXC’s – that the prior system did not work. *See* OCMC Comments at 2-3 (“many PSPs apparently did not receive the correct payphone compensation for calls routed to such resellers”); WorldCom Comments at 5-6 (conceding that “many SBRs did not comply with” payment obligations); Qwest Comments at 4 (task of recovering compensation “varied from difficult to impossible”).

Only Sprint argues that PSPs “exaggerated” the compensation shortfall under the prior rules – only to insist, with unintended irony, that its own efforts to collect from *its own SBR customers* has been fraught with problems. *See* Sprint Comments at 12 (claiming that “Sprint recovered only 69% [of] its payphone surcharges for SBR calls”). Sprint’s claim thus provides unintended support for PSPs’ arguments that SBRs frequently failed to comply with their compensation obligations.

Sprint concedes that there are “administrative costs of collection and . . . costs of bad debt associated with SBR calls.” *Id.* at 8; *see also id.* (noting that “Sprint has typically incurred bad debt expense accounting for 8% of payphone compensation from switchless resellers.”). Sprint suggests, however, that the Commission need do nothing to decrease PSPs’ exposure to such costs. *See id.* The cost-based per-call compensation *rate*, however, includes *no* allowance for

collection costs or bad-debt expense. *See Third Report and Order*,⁵ 14 FCC Rcd at 2618-20, ¶¶ 160-164. While Sprint is free to recover these costs of doing business, PSPs – which cannot demand any compensation over and above the regulated per-call compensation rate – are not. Any steps that the FCC takes to ensure that PSPs collect a higher proportion of the per-call compensation payments owed to them thus tends to bring the PSPs closer to receiving fair compensation, not “overcompensation” as Sprint claims.

B. The Tollgate Rule Has Assisted PSPs’ Collection Efforts

The Comments confirm that the Commission’s prediction has been borne out: the adoption of the Tollgate rule has assisted PSPs in their efforts to collect compensation for calls that IXCs route to SBRs. As Bulletins notes, the Tollgate rule reflects a “more sound policy” than the original rules. Bulletins Comments at 3. APCC has documented that compensation for SBR calls has “averaged at least 50% higher than the compensation paid by SBRs during the prior two years” before the Tollgate rule came into effect. APCC Comments at 15. Just as important, as the Coalition likewise explained in its Comments, “the cost of collections has declined dramatically” under the new rules, and PSPs are “saving the very substantial cost of collection activity and litigation.” *Id.* at 17.

Sprint and AT&T suggest that the Tollgate rule has led to “overcompensation” of PSPs because some IXCs and SBRs have agreed that all calls completed to an SBR’s platform may be treated as completed calls for compensation purposes. Sprint Comments at 8-10; AT&T

⁵ Third Report and Order, and Order on Reconsideration of the Second Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 2545 (1999) (“*Third Report and Order*”)

Comments at 16.⁶ But nothing in the Commission's rules requires IXC's to pay for any uncompleted calls. If IXC's choose to do so, it is presumably because it is easier and less expensive for them (and their SBR customers) to do so than to comply with their responsibilities for tracking calls to completion. As the IXC's themselves observe, there may be cases where it is less expensive for SBRs to pay on all payphone-originated call attempts than to implement the tracking capability necessary to provide call completion information to IXC's in usable form. *See* AT&T Comments at 10, 16; Sprint Comments at 8-9; MCI/WorldCom Comments at 24. Because tracking costs are not substantial,⁷ the fact that some SBRs would prefer to pay for all attempts than to pay for tracking indicates that their rate of call completion is very high. Moreover, if an SBR is unable to provide call completion information to IXC's, then they are equally incapable of providing the information to PSPs. Such SBRs would therefore be obligated to pay on all call attempts under the old rules as well.

In any event, IXC's choose to pay compensation on the basis of call attempts when it is more efficient for them and their SBR customers. These voluntary arrangements do not lead to overcompensation, they are simply the most efficient mechanism for ensuring that PSPs receive fair compensation for the services they provide to IXC's. *See also* 47 C.F.R. § 64.1300(a) (providing for payment of compensation as "agreed upon by the parties").

⁶ In light of a raft of IXC bankruptcies and years of IXC's and SBRs evading their compensation obligations, the claim that PSPs are being "overcompensated" for the services they are forced to provide to IXC's has no factual basis. Moreover, IXC's' emphasis on this point is particularly ironic in light of their practice of imposing charges well in excess of the per-call compensation rate on their own retail customers who make calls from payphones. Indeed, IXC's have recently raised those rates yet again to afford themselves an even more substantial profit on every such call. And when the FCC reduced the per-call compensation rate from \$.284 to \$.24, no IXC refunded the difference to its customers, even though they have demanded refunds from PSPs.

⁷ *See* Report and Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541, 20586-87, 20590-91, ¶¶ 88, 95-97 (1996).

II. IXCS ARE BEST SITUATED TO TRACK AND PAY COMPENSATION

Four years of failure under the original rules demonstrated beyond question that requiring SBRs to track and pay compensation for calls originated on payphones, carried by an IXC, and then passed to the IXCs' SBR customer was a mistake. PSPs were not in a position to identify the SBRs responsible for compensation, they could not determine how many calls a particular SBR received from their payphones, they could not induce IXCs to provide usable call-tracking information for such calls, and they could not obtain information or compensation from most SBRs. Logic and experience under the Tollgate rule demonstrate that placing the responsibility for tracking and paying compensation on IXCs alleviates these problems substantially.

A. IXCs Are Economic Beneficiaries of the Calls They Route to SBRs and Can Arrange for SBRs to Provide Call-Tracking Data Through Contract

By placing the responsibility for paying compensation on SBR-bound calls on IXCs, the Tollgate rule gives proper weight both to the manner in which call information is transmitted over the network and to the existence of business relationships among PSPs, IXCs, and SBRs. Coalition Comments at 7-12. Comments by SBRs and PSPs confirm these points. ASCENT – representing “numerous” SBRs – along with Focal and US LEC confirm that some SBRs “have not been and are not able to track payphone calls” – that is, determine which calls they receive from IXCs originated on payphones – “because the payphone coding digits are not always passed along by the IXC.” ASCENT Comments at 4; *cf.* MCI/WorldCom Comments at 11-12. These comments confirm that only IXCs have the ability to determine accurately which calls originate on payphones. Moreover, many SBRs apparently lack the ability to track coding-digit information, even when it is transmitted. *See* ASCENT Comments at 4; *see also*

MCI/WorldCom Comments at 14 (noting that many SBRs have not taken steps to track payphone-originated calls accurately).⁸

IXCs, moreover, are in the ideal position to obtain necessary call-completion data from their SBR customers pursuant to contract. SBRs confirm that this is exactly what is happening. Communigroup Comments at 3-4 (“as contemplated by the Commission, the facilities-based IXC has taken responsibility for tracking calls, but has procured the assistance of its customers, the [SBRs], where necessary to determine whether calls complete”); ASCENT Comments at 5 (“Currently, switch-based carriers provide first IXCs with call completion information and this information is used to calculate compensation amounts to PSPs.”). PSPs, by contrast, have no business relationship with SBRs and existing framework within which to arrange to obtain call-completion data from SBRs. If doing what the Commission’s Tollgate rule requires entails any expense for IXCs, they can recover those expenses: SBRs acknowledge that the two-cent administrative fee charged by IXCs “on its face, appears reasonable.” *Id.* at 8.

IXCs nonetheless express concerns that they have had difficulty managing their business relationships with their SBR customers and have had disagreements over the best way to exchange call data. But these complaints simply emphasize that IXCs and SBRs are engaged in the very sort of back-and-forth business negotiations that will enable any administrative or technical obstacles to full implementation of the Tollgate rule to be overcome efficiently. For example, MCI describes negotiations over what call data would be exchanged, billing issues, and

⁸ The fact that some IXCs may be unable reliably to distinguish SBR-bound calls from other toll-free calls that they carry (*see* IDT Comments at 8 (“IXCs *claimed* that the calls were sent to resellers”); Bulletins at 7 (some IXCs claimed “that any ‘wholesale’ call were considered SBR calls, and therefore exempt from payphone compensation”)) provides an additional reason to maintain the Tollgate rule. An IXC will no longer be able to attempt to escape responsibility for paying compensation by claiming that calls are sent to SBRs, when the wholesale customer in question claims not to be an SBR at all.

appropriate arrangements in cases where SBRs choose not to implement call-tracking systems. MCI/WorldCom Comments at 23-24. This type of negotiation is presumably just what the Commission had in mind when it adopted the Tollgate rule; nothing in MCI's comments provides any basis for concluding that such negotiations are any more difficult than comparable business negotiations on other issues between willing buyers and sellers.⁹ Sprint likewise insists that it has had "poor experience trying to 'work' with SBRs." Sprint Comments at 12; *see id.* at 10-13. As noted below, Sprint's complaints simply emphasize the inappropriateness of requiring PSPs to seek compensation from these same SBRs, whom PSPs cannot identify and with whom PSPs have no business relationship at all. More important, nothing in Sprint's comments suggests any reason that the problems that Sprint identifies cannot be remedied through ordinary business arrangements.¹⁰

AT&T is the sole carrier to make any effort to document a technical obstacle to using call completion data provided by SBR customers to track its compensation obligations, arguing that its call data records ("CDRs") do not always "match up" with CDRs maintained by its SBR customers. AT&T Comments at 8. AT&T does not explain, however, why it cannot work with its SBR customers to resolve this minor technical issue. More fundamentally, AT&T ignores the basic point that whatever obstacles it may face in obtaining accurate information from a

⁹ Sprint, citing a 1976 Commission order that applied to AT&T, suggests that it engages in resale only because it has a legal obligation to do so. Sprint Comments at 15. Whether or not Sprint has an obligation to make its telecommunications services available for resale, the *terms* under which it does so are for Sprint to decide. Indeed, MCI makes clear that IXCs want and need to cultivate the business of SBR customers. MCI/WorldCom Comments at 21 (IXCs "bend over backwards to attract and retain [SBR] customers").

¹⁰ Sprint claims that it has experienced a 31% shortfall in collection of per-call-compensation related charges from its SBR customers due to SBR bankruptcies and disputes. Sprint Comments at 12. Sprint chooses the terms upon which it offers service to SBRs, and it is therefore able to protect itself against any such risk. PSPs, by contrast, have no choice about whether to do business with Sprint itself, much less the SBR customers that Sprint cultivates.

customer with whom it has regular business dealings, PSPs are certain to face much greater obstacles.

MCI also argues that the Commission was mistaken in its view that IXC's have any leverage in their dealings with SBRs because IXC's, it argues, have no market power. MCI/WorldCom Comments at 19-21. But MCI's argument misses the point: the Commission relied on its view that the market for IXC services provided for resale is workably competitive in placing the obligation to pay compensation on IXC's. An individual IXC has *bargaining* leverage in its relationship with SBRs because it is providing a service that SBRs need, just as SBRs have bargaining leverage as potential customers. Thus, an individual IXC has the ability to offer an arrangement that reasonably protects its ability to recover the costs of the services it provides, including the carriage of calls from payphones. Presumably, no IXC would be willing to sell service for less than the marginal cost of providing it.

Likewise, in a well-functioning market, SBRs have the ability to resist efforts by IXC's to impose unreasonable terms and charges related to the collection of per-call compensation, contrary to the suggestion of a few resellers. *Compare* Comments of TelStar International, Inc. at 3 ("IXC's . . . hold SBRs hostage to unfair and unjust practices"); IDT Comments at 19 ("IXC/SBR relationship . . . has been harmed greatly"); *with* MCI/WorldCom Comments at 21 ("There are many mid-sized carriers and smaller, new entrants, to whom SBRs may go for service"); Sprint Comments at 15 ("the wholesale market is intensely competitive"). Indeed, most resellers express general satisfaction with the operation of the new rules.

Thus, the Comments confirm that, by requiring IXC's to pay compensation for all completed payphone-originated calls they choose to carry, the Commission has appropriately left it to the market to ensure that call-tracking data is efficiently obtained from SBRs. For this

reason, the Commission should not fall into the trap of attempting to pre-judge what contractual arrangements between IXC's and SBRs are appropriate for recovery of per-call compensation charges and administrative expenses.¹¹ In the absence of substantial market power, a seller cannot sustainably impose unreasonable terms and conditions on a buyer, which is free to purchase service elsewhere. If particular IXC's engage in practices that violate the law, the Commission can address them through enforcement proceedings or in declaratory rulings. But the Commission should resist pronouncements that may tend to interfere with the operation of the market.

Finally, AT&T argues that requiring IXC's to pay compensation for SBR-bound calls violates the principle that the "primary economic beneficiary" of a payphone-originated call should bear the responsibility for tracking and paying compensation. AT&T Comments at 19. But AT&T ignores the obvious: *both* SBRs *and* IXC's are economic beneficiaries of payphone-originated calls. IXC's are compensated at market rates for the services they provide to SBRs, including the ability to originate calls from payphones. IXC's could not offer that service at all unless they had access to the services that PSPs provide in the first place. There is thus nothing improper about requiring IXC's to pay PSPs for *all* completed payphone-originated calls that they carry, including those that they pass on to SBRs. AT&T's argument that it has a legal entitlement to receive some services from PSPs but not to pay for them is without merit.¹²

¹¹ Indeed, it appears that the principal objection of AT&T and MCI to the current regime is that the Commission has constrained their ability to negotiate with the SBR customers for payment of per-call-compensation-related charges. AT&T Comments at 9-10; MCI/WorldCom Comments at 17-18.

¹² As the Commission has made clear, the obligation to pay compensation is the IXC's *own* obligation; they pay for the service they receive from PSPs, and they are then permitted to charge SBRs for the services IXC's provide to SBRs. Global Crossing's suggestion to the contrary (Global Crossing Comments at 8-10) is incorrect.

B. Requiring SBRs to Compensate PSPs Directly Was and Would Remain a Disaster

The Commission should reject calls by IXC and some resellers to return to the failed compensation system of the original *Payphone Orders*. As the comments filed in this proceeding confirm, not only SBRs but IXCs failed to comply with their responsibilities under the prior compensation regime. *See, e.g.*, Bulletins Comments 4-8 (IXCs did not comply); IDT Comments at 7-8 (IXCs did not comply). There is no reason to believe that either SBRs or IXCs would display any greater willingness to comply if the rules were put back into place.

Just as important, however, even if IXCs begin to comply with their obligation to identify the SBRs to whom they route individual calls that they receive from PSPs, placing the obligation to pay compensation on SBRs is massively inefficient. Because there are thousands of PSPs and thousands of resellers, placing the obligation to pay compensation on SBRs gives rise to millions of individual payment obligations, which range from significant to miniscule. *See* APCC Comments at 3-11. Moreover, the need to collect, and the obligation to pay, per-call compensation is likely the *only* relationship that the vast majority of SBRs would have with any individual PSP. Rather than build on existing market relationships, the original rules forced unwilling sellers to attempt to devise a mechanism to collect from thousands of unwilling payors who could not even be identified in many cases, let alone located. The existence of clearinghouses did not alleviate the problem. APCC Comments at 18-19.

Thus, placing the obligation to pay compensation on SBRs would again ensure that the transaction costs associated with collecting payphone compensation would overwhelm the compensation to be paid in many cases and create massive inefficiencies in others. *See* APCC Comments at 6-11. Those inefficiencies and lost compensation impose significant social costs, creating a dead-weight economic loss and reducing output of payphone services below the level

that Congress intended. By contrast, requiring IXCs to obtain compensation from their customers for the services that the IXCs provide (including carriage of payphone-originated calls) builds on existing relationships, does not require creation of a new billing infrastructure, and permits market negotiation, rather than administrative fiat, to resolve disputes over implementation. The comments in this proceeding demonstrate that experience has borne out this logic.

C. The Commission Should Not Entertain Any Additional Alternatives

WorldCom and Sprint each advocate a caller-pays approach to per-call compensation that the Commission has rejected repeatedly in the past. Reconsidering that decision should be considered beyond the scope of the notice, and the Commission should therefore not consider it. In any event, for all of the reasons that the Commission has rejected this approach in the past, it should continue to do so now. *See Third Report and Order*, 14 FCC Rcd at 2597, ¶ 114 (citing prior orders).

More generally, the Commission should resist other carriers' proposals for alternative arrangements to deal with SBR-bound calls. *See, e.g.*, Global Crossing Comments at 7-8 (proposing adoption of a timing surrogate or call attempts methodology). The industry's experience with the Tollgate rule demonstrates that it has worked relatively well, and there is no basis in the record for concluding that any untested alternative would work as well or better. Moreover, as a practical matter, given the limited time available before the D.C. Circuit's stay of its mandate in the *Sprint* case expires, the Commission does not have adequate time to develop the additional information that would be required to permit it to explore any such alternative adequately.

Relatedly, the Commission should not weigh in on disputes over matters such as what type of call-completion information IXCs must consider adequate or reliable, or who bears responsibility if false information is provided. The only *regulatory* obligation at issue here should be the IXCs' obligation to pay per-call compensation on all completed dial-around calls they receive from payphones. The obligations between SBRs and IXCs are *contractual*, and – in the absence of proof of significant market failure – should not be subject to Commission regulation.

III. THE COMMISSION SHOULD NOT RELAX EXISTING REPORTING REQUIREMENTS

Not surprisingly, some comments filed by IXCs complain that the existing reporting requirements are too burdensome. Sprint Comments at 16-17; Global Crossing Comments at 8. Those requirements have been in place for a substantial period, and IXCs have, in fact, complied with them. The Coalition therefore supports retaining the existing requirements.

APCC and Bulletins argue that the existing requirements are not stringent enough. APCC Comments at 23-25; Bulletins Comments at 23. The Coalition would not object to strengthened reporting requirements that those commenters propose.

IV. PARTIES MAY AGREE TO ARRANGEMENTS THAT ARE DIFFERENT FROM THOSE IN THE COMMISSION'S RULES

The Commission's payphone compensation rules have always applied only where the parties have not agree to a different arrangements. *See* 47 C.F.R. § 64.1300(a). All parties appear to agree that SBRs, PSPs, and IXCs should be permitted to enter into private contractual arrangements to modify any of the regulatory obligations the Commission's rules impose. The Commission should therefore reaffirm that such arrangements are permitted.

Where it makes business sense, these arrangements might involve direct relationships between SBRs and PSPs. However, for all the reasons discussed above, the Coalition would

expect that arrangements between PSPs and IXC's would be more likely. While the Commission has stated that it "supports direct relationships between SBRs and PSPs" and that "the first IXC's would no longer be responsible for payment of compensation on behalf of SBRs that assume direct liability for compensable calls through private contractual agreements with PSPs" (*Third Reconsideration Order*,¹³ 16 FCC Rcd at 20926, ¶ 12), the Coalition would expect that such agreements would be the exception rather than the rule. Creating new contractual and billing relationships among parties that otherwise have no dealings simply to arrange for payment of very small amounts of per-call compensation is likely to lead to great inefficiencies and increased transaction costs. For all the reasons discussed above, requiring IXC's to pay compensation on *all* the completed payphone-originated calls they carry has proven to be a far more efficient and fair solution to the problem of SBR-bound calls. The Commission's Tollgate rule has contributed meaningfully to the fulfillment of the statutory goal of ensuring that PSPs receive fair compensation for the services they provide. It is not surprising that parties have not been eager to adopt less-efficient alternatives.

¹³ Third Order On Reconsideration and Order On Clarification, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 16 FCC Rcd 20922 (2001) ("*Third Reconsideration Order*").

CONCLUSION

The Commission should readopt the rules contained in the *Second Reconsideration Order*.

Respectfully submitted,



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